IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 03 OF 2006 (M/S)

Satya Prakash Goyal, S/O Sri Nathumal,
R/O 7, Court Road, Dehradun through
Its Special Power of Attorney Ravindra Singh,
S/O Bhagat Singh R/O Hotel Relax, 7 Court Road,
Dehradun

… **Petitioner.**

Versus

1. Additional District Judge, VII Fast Track Court Dehradun.
2. Jagdish Prasad Agarwal, S/O Ganga Saran Agarwal,
   R/O H. No. 5/422/1-2 Mohalla Ali Mahajan Saharanpur.
3. L.I.C. of India, 113/1 Rajpur Road, Dehradun through its
   Branch Manager.

…. **Respondents.**

Sri Alok Singh, Sr. Adv. assisted by Sri Gopal Narain, learned counsel for the Petitioner.
Sri Nand Prasad, Id. Standing Counsel for the State.
Sri S.K. Jain, learned counsel for the respondent no.2.
Sri M.C. Kandpal, Sr. Adv., assisted by Sri Kurwan Ali, learned counsel for the respondent no.3.

Dated 06-03-2006

Hon'ble B.S. Verma, J.

Heard learned counsel for the parties.

By means of this writ petition the petitioners has prayed to issue a writ order or direction in the nature of certiorari quashing the order dated 13-12-2005 passed by the respondent no1 in Original Suit No. 17 of 1998, whereby the learned Additional District Judge-respondent no.1 has dismissed the application 133-C moved in the suit and also directed that that similar application no. 31-C2 and objection 33-C2 moved in Suit No. 876 of 1998 shall stand disposed of accordingly. It was also ordered that a copy of the impugned order be placed on the record of Civil Suit No. 876 of 1998.

The only ground raised by the learned counsel for the petitioner is that the learned Additional District Judge without consolidating both the Civil Suits ought not to have passed the impugned order, which is against the provision of Order 4-Aof the C.P.C. This approach of the petitioner is misconceived.

It is not disputed that Original Suit No. 17 of 1998 was filed by Jagdish Prasad against L.I.C. and others, while Original Suit No. 876 of 1998 has been filed by Satya Prakash Goyal against Jagdish Prasad Agarwal. Both the suits have been filed arising out of different cause of action and on different facts. Not only this, the parties in both the suits are different. In these circumstances, there is no necessity pass any order under the provisions of Order IV A of the C.P.C. The provisions of Order IV A are self explanatory, which provides for consolidation of suits and proceedings:-

Order IV A of the C.P.C. runs as follows:-

"Consolidation of suits and proceedings- When two or more suits or proceedings are pending in the same court, and the Court of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, whereupon all such suits and proceedings may be decided upon the evidence in all or any such suits or proceedings."

The petitioners have failed to show that both the aforesaid suits arise out of the same cause of action and that the suits are between the same parties. The matter for consideration in both the suits is different. Moreover, the learned Additional District Judge has only disposed of an application. The Trial Judge has nowhere opined that these two suits (17 of 1998 and Original Suit No. 876 of 1998) can be decided by joint trial by recording common evidence.

It is true that the Trial Judge has disposed of application no. 133-C moved by plaintiff Jagdish Prasad Agarwal in Suit No. 17 of 1998. Jagdish Prasad is admittedly defendant in Suit

No. 876 of 1998 filed against him by Sat Prakash Goel, which has been filed for decree of specific performance of contract. It is not disputed that Suit No. 17 of 1998 filed by plaintiff Jagdish Prasad against L.I.C. of India and two others is a declaratory suit.

In the facts and circumstances of the case, I do not find any perversity or illegality in the order impugned. The writ petition is misconceived and has no merit.

The merit petition is hereby dismissed. No order as to costs.

(B.S. Verma, J.)

RCP